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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products  
Liability Litigation

No. MD-15-02641-PHX-DGC

**EXHIBIT INDEX**

**PLAINTIFFS' OMNIBUS STATEMENT  
OF LAW AND GENERALLY-  
APPLICABLE ARGUMENTS IN  
OPPOSITION TO BARD'S MOTIONS TO  
EXCLUDE PLAINTIFFS' EXPERTS  
UNDER RULE 702 AND *DAUBERT***

Exhibit 1      Moritz Deposition Transcript Excerpts July 18, 2017

# EXHIBIT 1

1           IN THE UNITED STATES DISTRICT COURT  
2                       FOR THE DISTRICT OF ARIZONA

3                       -   -   -

4  
5           IN RE:    BARD IVC                       :  
6           FILTERS PRODUCTS                    :   NO.  
7           LIABILITY LITIGATION               :   MD-15-02641-  
8   :   PHX-DGC

9                       :

10                    :

11                   -   -   -

12                               July 18, 2017

13                   -   -   -

14                   DO NOT DISCLOSE - SUBJECT TO FURTHER  
15                               CONFIDENTIALITY REVIEW

16                               Videotaped deposition of  
17           MARK W. MORITZ, M.D., taken pursuant to  
18           notice, was held at the offices McCarter  
19           & English, LLP, 100 Mulberry Street,  
20           Newark, New Jersey, beginning at 9:07  
21           a.m., on the above date, before Michelle  
22           L. Gray, a Registered Professional  
23           Reporter, Certified Shorthand Reporter,  
24           Certified Realtime Reporter, and Notary  
                Public.

                             -   -   -

21                               GOLKOW LITIGATION SERVICES  
22                               877.370.3377 ph | 917.591.5672 fax  
23                                       deps@golkow.com  
24

1 Q. Did you read each one in  
2 detail?

3 A. There was one that was about  
4 250-some pages, I think Dr. Kessler. So  
5 I read his conclusion, and I skimmed  
6 through the rest of the report.

7 Q. If there was anything  
8 pertinent in the report, would you have  
9 included that in your report?

10 A. I would have.

11 Q. Did you inquire where there  
12 were additional depositions or additional  
13 documents that could help you arrive at  
14 your opinions?

15 A. I don't recall.

16 Q. Would that be noted in your  
17 statement, your invoice, if you called  
18 somebody and asked for additional  
19 information?

20 A. Not necessarily. It would  
21 just be a phone conversation.

22 Q. Did you -- did you ever  
23 inquire whether there might be  
24 information out there that you needed to

1 see that would be contrary to the  
2 opinions you were reaching in this case?

3 A. Well, I believe we had a  
4 conversation once about whether there was  
5 other relevant information I should see.  
6 And I did see some -- I did actually not  
7 see the documents that Dr. Kessler was  
8 referring to or that the other experts on  
9 the case were referring to.

10 Q. You did not see them?

11 A. No. They were Bard internal  
12 documents, I believe.

13 Q. All right. So when you  
14 looked at the expert reports for the  
15 plaintiffs, including Dr. Kessler and  
16 some others, you saw that those experts  
17 had been provided internal documents by  
18 Bard?

19 A. Yes.

20 Q. And you made an inquiry  
21 about those documents, right?

22 A. I believe I did.

23 Q. But you were not provided  
24 any of those actual documents?

1                   A.       I was not.

2                   Q.       Did that concern you at all?

3                   A.       Well, I thought that  
4       Kessler's report was so thorough and so  
5       long and so detailed that he probably  
6       reviewed all of them. And by looking at  
7       his conclusions I got the gist of what  
8       was in them.

9                   Q.       But were you concerned that  
10       you did not have access to the same type  
11       of information that the experts on the  
12       plaintiffs' side received?

13                  A.       I was not concerned.

14                  Q.       Were you provided any access  
15       to any type of database on the part -- by  
16       Bard that had all the internal documents  
17       so that you could freely look at what you  
18       wanted to?

19                  A.       No.

20                  Q.       Did you have to sign any  
21       type of a confidentiality agreement with  
22       the attorneys for Bard to perform work in  
23       this case?

24                  A.       I don't recall that I did.

1 fatalities involved?

2 A. No.

3 Q. Is that true?

4 A. Yes.

5 Q. Thank you.

6 Now, Dr. Moritz, as a  
7 medical doctor and a vascular surgeon,  
8 did you have interactions with medical  
9 device companies like Bard?

10 A. I did.

11 Q. And do you agree that in  
12 those interactions that a doctor must act  
13 in the best interest of his patients?

14 A. I agree.

15 Q. And that means that a doctor  
16 must rely on the medical device company  
17 to give it complete, accurate and  
18 thorough information about its devices,  
19 fair?

20 MR. BROWN: Object to the  
21 form.

22 THE WITNESS: Yes.

23 BY MR. O'CONNOR:

24 Q. Okay. And among reasons

1 that's important is because as a medical  
2 doctor and in treating your patients in  
3 advising your plaintiffs -- your  
4 patients, you need to be versed in risks  
5 and benefits of a device, correct?

6 A. Correct.

7 Q. And when you engage in the  
8 informed consent process, a patient  
9 relies on you to not only advise him or  
10 her of the risks or the benefits, but  
11 also of the risks, correct?

12 A. Correct.

13 Q. And it's important for you  
14 as a medical doctor that is going to  
15 engage in that important discussion with  
16 your patients to not only be aware of the  
17 risks, but also to be able to discuss  
18 with your patients the likelihood of a  
19 risk occurring should he or she decide to  
20 undergo the procedure that's the subject  
21 of the informed consent process?

22 A. That makes sense.

23 Q. And that's a reason why,  
24 among others, a doctor has to rely on the



1 medical community, correct?

2 MR. BROWN: Object to the  
3 form.

4 THE WITNESS: Well, I think  
5 it is if it's -- if it's  
6 significant.

7 BY MR. O'CONNOR:

8 Q. Well, and if the company,  
9 the medical device company such as Bard,  
10 has statistically significant evidence  
11 that its device has the potential for  
12 increased risks of harm, that's  
13 information you expect that Bard or any  
14 device company will be transparent and  
15 open and honest to the medical community  
16 about?

17 MR. BROWN: Object to the  
18 form.

19 THE WITNESS: I agree.

20 BY MR. O'CONNOR:

21 Q. Thank you.

22 Certainly if a device  
23 company like Bard has promotional  
24 information about a device that's no

1 THE WITNESS: All the  
2 filters being different, we have  
3 different expectations depending  
4 on how they're designed. They're  
5 used for different purposes.

6 BY MR. O'CONNOR:

7 Q. Well, I hear you, but if a  
8 device in principle must be as safe and  
9 effective as its predicate device, that's  
10 certainly something that would be a  
11 reasonable expectation for a medical  
12 doctor and a patient, fair?

13 MR. BROWN: Object to the  
14 form.

15 THE WITNESS: What you would  
16 want.

17 BY MR. O'CONNOR:

18 Q. When you talk about  
19 prophylaxis use of filters, you do know  
20 that a company like Bard should not  
21 market prophylactic -- prophylactic use  
22 of its devices, correct?

23 A. I don't know what the  
24 regulations are in terms of what they're

1 form.

2 THE WITNESS: Well,  
3 permanent filters can tilt and  
4 migrate too.

5 BY MR. O'CONNOR:

6 Q. Well, I'm just comparing  
7 this to the Simon Nitinol filter. You  
8 saw that there is literature out there  
9 that suggested that the optional filters  
10 were not behaving in a way that the  
11 predicate devices had behaved?

12 MR. BROWN: Object to the  
13 form.

14 BY MR. O'CONNOR:

15 Q. True?

16 A. That's true.

17 Q. And that certainly is  
18 something you would agree is against or  
19 contrary to your reasonable expectations  
20 as a medical doctor and a patient's  
21 reasonable expectations as well?

22 MR. BROWN: Object to the  
23 form.

24 THE WITNESS: Yes.

1 Q. Failures of Bard filters  
2 include tilting?

3 A. Correct.

4 Q. Failure of Bard filters  
5 include fracture?

6 A. Yes.

7 Q. Embolization?

8 A. Yes.

9 Q. And failures also include  
10 penetration into other organs, correct?

11 A. Correct.

12 Q. And you have seen at least  
13 in reviewing the plaintiff experts that  
14 there were internal documents in Bard  
15 which spoke to serious injuries, and even  
16 death caused by failure modes of Bard  
17 filters?

18 A. Correct.

19 Q. And certainly that's  
20 something I think you would agree that a  
21 medical doctor would want to know from a  
22 medical device company in making  
23 decisions about which type of devices to  
24 use for patients, fair?

1 MR. BROWN: Object to the  
2 form.

3 THE WITNESS: Yes.

4 BY MR. O'CONNOR:

5 Q. And certainly from what  
6 you've told me before, you certainly  
7 cannot discuss what if anything Bard did  
8 by way of warning of its knowledge of the  
9 types of filters and complications that  
10 Bard became aware of, true?

11 A. Well, I remember a letter  
12 around 2005 that I think I got.

13 Q. All right. So you got some  
14 kind of "Dear Colleague" or "Dear Doctor"  
15 letter?

16 A. "Dear Doctor" letter.

17 Q. You're not going to be  
18 talking about that letter in this trial,  
19 fair?

20 MR. BROWN: Object to the  
21 form.

22 THE WITNESS: No, I didn't  
23 intend to.

24